IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6911 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARUNKUMAR MANHARLAL BHATT & 1 - Petitioner(s)
Versus
HALOL URBAN CO OP BANK LTD. - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 - 2.MRS RANJAN B PATEL for Petitioner(s) : 1 - 2.
MR SHIRISH JOSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/06/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri Shirish Joshi waives service of notice of rule on behalf of

respondent. At the joint request of learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. The petitioners had borrowed certain amounts from respondent-Bank. Since the amount was not returned in full, the respondent-Bank instituted a Lavad Suit against the petitioner. The suit came to be decreed in favour of the Bank by the Board of Nominees on 26-8-2002. The petitioners appealed against the judgement and decree of the Board of Nominees, however, after the period of limitation was over. The application for condonation of delay filed by the petitioners was rejected by the Cooperative Tribunal by its impugned order dated 23-3-2005. It is this order that has aggrieved the petitioners and the petitioners have therefore, filed the present petition.

3. By an order dated 19-4-2005, this Court had directed the petitioners to pay a sum of Rs.30,000/- to the Bank.

4. It is stated that the suit filed by the Bank was for a sum of Rs. 2,28,077/-.

5. Having heard the learned advocates appearing for the parties and having perused the material on record, I find that the petitioners deserve an opportunity to pursue the appeal. Of-course there was some delay in filing the appeal before the Tribunal, the case of the petitioners is that they came to know about the order passed by the Board of Nominees when they received notice from the Bank dated 1-10-2003. They therefore, applied for and obtained certified copy of the order of the Board of Nominees and preferred an appeal on 27-1-2004.

6. Considering all these aspects of the matter, I find the delay deserves to be condoned. The petitioners are facing a money decree. So far they have deposited only Rs. 30,000/- towards the decree drawn. It is therefore, provided that the petitioners shall deposit with the Bank a

further sum of Rs.30,000/- within a period of four weeks from today. This of-course will be subject to outcome of the appeal.

7. In the result, the petition is allowed. The impugned order dated 23-3-2005 passed by the Cooperative Tribunal is set aside. The delay caused in filing the appeal shall stand condoned. The Tribunal may proceed with the appeal as well as application for stay on merits.

8. With these directions, the petition is disposed of. Rule made absolute accordingly with no order as to costs.

(Akil Kureshi,J.)

(raghu)